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10/721,704	11/25/2003	Howard M. Lee	062403.P002	6308

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EXAMINER

MANSFIELD, THOMAS L

ART UNIT	PAPER NUMBER
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3623

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PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/721,704	Applicant(s) LEE, HOWARD M.	
	Examiner THOMAS MANSFIELD	Art Unit 3623	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 25 November 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-104 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-104 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 25 November 2003 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|----------------------------------------------------------------------------------------|-------------------------------------------------------------------|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>25 November 2003, 15 October 2005</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Status of Claims

1. This First Office action is in reply to the Application filed on 25 November 2003.
2. Claims 1-104 are currently pending and have been examined.

Drawings

3. New corrected drawings in compliance with 37 CFR 1.121(d) are required in this application because the drawings contain hand-drawn figures and lettering. Applicant is advised to employ the services of a competent patent draftsman outside the Office, as the U.S. Patent and Trademark Office no longer prepares new drawings. The corrected drawings are required in reply to the Office action to avoid abandonment of the application. The requirement for corrected drawings will not be held in abeyance.

Claim Objections

4. Claims 27-28 and 55-56 are objected to because of the following informalities: Claims 27 and 28 recite the same limitation. Similarly, Claims 55 and 56 also recite the same limitation. For examination purposes, the Examiner has combined Claims 27 and 28 together and Claims 55 and 56 together. Appropriate correction is required
5. Claims 84-86 are objected to because of the following informalities: Claims 84-86 depend from Claim 83 that recites a *database* limitation. Claims 84-86 recite *apparatus* limitations. Appropriate correction is required. For Examination purposes, the Examiner will interpret Claims 84-86 as *database* limitations depending from Claim 83.

Claim Rejections - 35 USC § 101

1. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

2. Claims 1-13, 34-41, and 64-73 are rejected under 35 U.S.C. 101 based on Supreme Court precedent, and recent Federal Circuit decisions, the Office's guidance to examiners is that a § 101 process must (1) be tied to another statutory class (such as a particular apparatus) or (2) transform underlying subject matter (such as an article or materials) to a different state or thing. *Diamond v. Diehr*, 450 U.S. 175, 184 (1981); *Parker v. Flook*, 437 U.S. 584, 588 n.9 (1978); *Gottschalk v. Benson*, 409 U.S. 63, 70 (1972); *Cochrane v. Deener*, 94 U.S. 780, 787-88 (1876).
3. An example of a method claim that would not qualify as a statutory process would be a claim that recited purely mental steps. Thus, to qualify as a § 101 statutory process, the claim should positively recite the other statutory class (the thing or product) to which it is tied, for example by identifying the apparatus that accomplishes the method steps, or positively recite the subject matter that is being transformed, for example by identifying the material that is being changed to a different state.

Here, Applicant's method steps fail the first prong of the new Federal Circuit decision since they are not tied to another statutory class and can be preformed without the use of a particular apparatus. Thus, Claims 1-13, 34-41, and 64-73 are non-statutory since they may be performed within the human mind.

Claim Rejections - 35 USC § 102

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

7. Claims 1, 3-12, 14, 16-32, 34, 36-40, 42, and 44-62 are rejected under 35 U.S.C. 102(a) as being anticipated by Freedman et al (WO 03/009175).

With regard to Claims 1, 14, 34, and 42, Freedman teaches *a method and apparatus* (see at least page 7, line 21 through page 8, line 17) *comprising:*

- *receiving/monitoring a storable representation* (interaction capture and storage) *of an audio/video* (audio, video) *interaction between an agent* (agent) *of a business* (business) *and a customer* (customer interaction) (see at least page 6, lines 5-19).
- *analyzing the storable representation to determine service quality provided to the customer by the agent* (quality management module for analyzing and evaluating the subject-related data) (see at least page 9, lines 13-14).
- *generating analysis data associated with the analyzing* (generates idea-related data customer surveys thereby providing further analysis) (see at least page 9, lines 18-20).

With regard to Claims 3, 16, and 44, Freedman teaches *wherein the agent and the customer are face-to-face during the audio/video interaction* (face-to-face meetings) (see at least page 24, line 6).

With regard to Claims 4, 17, and 45, Freedman teaches *wherein the agent and the customer are not face-to-face during the audio/video interaction* (off-line via transmission of e-mail messages) (see at least page 25, line 6).

With regard to Claims 5-6, 18-19, and 46-47, Freedman teaches *wherein a device is used to obtain the storable representation of the audio/video interaction* (Video interaction 62), *wherein the device is selected from the group consisting of a video-telephone* (telephone or Internet video-conference), *a workstation, an audio/video monitoring system, a lap-top computer* (agent computing device), *a personal data assistant, a tablet computer and a wearable computer* (see at least page 24).

With regard to Claims 7, Freedman teaches *transmitting the storable representation to a second geographic area* (The database may be located remotely to the organization and access via local or wide area networks, content is passed or exchanged) (see at least page 14, line 28 through page 15, line 10).

With regard to Claims 8-9, 22-23, 36, and 50-51, Freedman teaches *wherein the analyzing occurs at a frequency that requires at least one of the agent's audio/video interactions per day to be analyzed for service quality, wherein the analyzing occurs at a frequency selected from the group consisting of at least once per day, more than once per day and a frequency sufficient to provide a statistically relevant sample of the agent's audio/video interactions* (analysis of at least two interactions captured, agent's interactions) (see at least page 13, lines 6-20).

With regard to Claims 10, 24, 38, and 52, Freedman teaches *informing the agent of at least one agent performance element that could be performed even better* (may assist the manager or supervisor to determine that the agent or traders perform adequately) (see at least page 13, lines 1-6).

With regard to Claims 11, 25, 39, and 53, Freedman teaches *notifying the agent of at least one agent performance element that was well performed* (organizations could define criteria that evaluate agent performance) (see at least page 47, lines 10-13).

With regard to Claims 12, 26, 40, and 54, Freedman teaches *providing a training tip for the agent on the analyzing* (the system is triggered to send an e-learning tutorials to specific agents in order to improve their skills) (see at least page 57, lines 3-9).

With regard to Claims 20 and 48, Freedman teaches *a communication link to facilitate communications between the first geographic area and the second geographic area* (see at least page 6, lines 15-28).

With regard to Claims 21 and 49, Freedman teaches *wherein the communications link further comprises a satellite* (see at least page 56, line 25).

With regard to Claims 27, 28, 55, and 56, Freedman teaches *a data base comprising a plurality of analysis data collected from the agent* (database for storing interactions) (see at least page 7, line 26).

With regard to Claims 29-32 and 59-62, Freedman teaches *wherein the first geographic area is the United States of America and the second geographic area is selected from the group consisting of Botswana, Fiji, India, Kenya, Liberia, Nigeria, South Africa, Swaziland, Tanzania and the Philippines, external to the United States of America, Argentina, Dominican Republic, Ecuador, El Salvador, Equatorial Guinea, Republic of the Congo, Mexico, Nicaragua, Panama, Uruguay, Algeria, Rwanda, Senegal and Haiti* (database may be located remotely to the organization and accessed via local or wide area networks) (see at least page 14, lines 29-30).

With regard to Claim 37, Freedman teaches *wherein the audio/video interaction further comprises data associated with the audio/video interaction* (see at least page 6, lines 5-19).

With regard to Claim 57, Freedman teaches *wherein the audio/video interaction further comprises a telephone call* (interactions are telephone conversation) (see at least page 15, lines 3-6).

With regard to Claim 58, Freedman teaches *wherein the audio/video interaction further comprises an email message* (an e-mail arrived in association with the call) (see at least page 53, lines 25-28).

Claim Rejections - 35 USC § 103

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.
9. Claims 2, 13, 15, 33, 35, 41, 43, and 63-104 are rejected under 35 U.S.C. 103(a) as being unpatentable over Freedman et al (WO 03/009175) as applied to Claims 1, 3-12, 14, 16-32, 34, 36-40, 42, and 44-62 above.

With regard to Claims 2, 15, 35, and 43, Freedman does not specifically teach *wherein the business is located in a first geographic area and the analyzing occurs in a second geographic area and the second geographic area is subject to a geographic wage attenuator*. However, Official Notice is taken that business conducted between different geographic locations subject to cost differentiation specific to that location was old and well-known measures in the art at the time of the invention. It would have been obvious to one having ordinary skill in the art to modify the method of Freedman to include the teaching of Official Notice for the benefit of conducting business on a world scale and adjusting the pricing, cost, or salary based on off-shoring methods or the locality pay.

With regard to Claims 13, 33, 41, and 63, Freedman does not specifically teach *transferring a debit or a credit in exchange for analyzing the audio/video interaction*. However, Official Notice is taken that business transactions involving some type of payment method were old and well-known measures in the art at the time of the invention. It would have been obvious to one having ordinary skill in the art to modify the method of Freedman to include the teaching of Official Notice for the benefit of, for example, a credit card payment over the telephone or on-line credit/debit transaction for services rendered.

With regard to Claims 64, 74, 75, 87, 88, and 97, Freedman teaches *a method, apparatus, database, and computer-readable medium executable computer program instructions* (see at least page 7, line 21 through page 8, line 17) *comprising:*

- *receiving/monitoring a storable representation* (interaction capture and storage) *of an audio/video* (audio, video) *interaction between an agent* (agent) *of a business* (business) *and a customer* (customer interaction) (see at least page 6, lines 5-19) *wherein the business is located in a first geographic area* (call centers) (see at least page 12, lines 11-19).
- *generating analysis data associated with the analyzing* (generates idea-related data customer surveys thereby providing further analysis) (see at least page 9, lines 18-20).

Freedman does not specifically teach *analyzing the storable representation, in a second geographic area, to determine the service quality provided to the customer by the agent wherein the second geographic area is subject to a wage attenuator, and, utilizing wage attenuation to reduce a cost of analyzing the audio/video interaction in the second geographic area relative to a cost of analyzing the audio/video interaction in the first geographic area.* However, Official Notice is taken that off-shoring or out-sourcing business services to different geographic locations were old and well-known measures in the art at the time of the invention. It would have been obvious to one having ordinary skill in the art to modify the method of Freedman to include the teaching of Official Notice for the benefit of conducting business on a world scale and adjusting the pricing, cost, or salary based on off-shoring methods or the locality pay.

With regard to Claims 65, 83, and 93, Freedman teaches *wherein the analyzing occurs at a frequency that requires at least one of the agent's audio/video interactions per day to be analyzed for service quality, wherein the analyzing occurs at a frequency selected from the group consisting of at least once per day, more than once per day and a frequency sufficient to provide a statistically relevant sample of the agent's audio/video interactions* (analysis of at least two interactions captured, agent's interactions) (see at least page 13, lines 6-20).

With regard to Claims 66, 94 and 100, Freedman teaches *wherein the audio/video interaction further comprises data associated with the audio/video interaction* (see at least page 6, lines 5-19).

With regard to Claims 67, 84, 85, and 95, Freedman teaches *notifying the agent of at least one agent performance element that was well performed* (organizations could define criteria that evaluate agent performance) (see at least page 47, lines 10-13), and, *informing the agent of at least one agent performance element that could be performed even better* (may assist the manager or supervisor to determine that the agent or traders perform adequately) (see at least page 13, lines 1-6).

With regard to Claims 68 and 86, Freedman teaches *providing a training tip for the agent on the analyzing* (the system is triggered to send an e-learning tutorials to specific agents in order to improve their skills) (see at least page 57, lines 3-9).

With regard to Claims 69, 78, and 96, Freedman does not specifically teach *transferring a debit or a credit in exchange for analyzing the audio/video interaction*. However, Official Notice is taken that business transactions involving some type of payment method were old and well-known measures in the art at the time of the invention. It would have been obvious to one having ordinary skill in the art to modify the method of Freedman to include the teaching of Official Notice for the benefit of, for example, a credit card payment over the telephone or on-line credit/debit transaction for services rendered.

With regard to Claims 70, 79, 89, and 101, Freedman teaches *wherein the agent and the customer are face-to-face during the audio/video interaction* (face-to-face meetings) (see at least page 24, line 6).

With regard to Claims 71, 80, 90, and 102, Freedman teaches *wherein the agent and the customer are not face-to-face during the audio/video interaction* (off-line via transmission of e-mail messages) (see at least page 25, line 6).

With regard to Claims 72-73, 81-82, 91-92, and 103-104, Freedman teaches *wherein a device is used to obtain the storable representation of the audio/video interaction* (Video interaction 62), *wherein the device is selected from the group consisting of a video-telephone* (telephone or Internet video-conference), *a workstation, an audio/video monitoring system, a laptop computer* (agent computing device), *a personal data assistant, a tablet computer and a wearable computer* (see at least page 24).

With regard to Claim 76, Freedman teaches *wherein analyzed for service quality includes scoring the agent according to predefined criteria* (pre-defined criteria, in the QM evaluation form the sub-section scoring the agent's courtesy is automatically filled by the value "0") (see at least page 57, lines 18-29).

With regard to Claim 77, Freedman teaches *scoring the agent according to criteria developed by sampling agent performance at least once a day on a substantially continuing basis* (pre-defined criteria, in the QM evaluation form the sub-section scoring the agent's courtesy is automatically filled by the value "0") (see at least page 57, lines 18-29).

With regard to Claim 98, Freedman teaches:

- *a data display* (graphical display content) *configured with the processor to facilitate determining the service quality of the audio/video interaction* (see at least page 24, lines 24-30).
- *a data input device configured with the processor to accept input* (user's input activities) *from an analyst, wherein the input is part of the analysis data* (see at least page 24, lines 24-30).

With regard to Claim 99, Freedman teaches *wherein the data input device is selected from the group consisting of a computer mouse, a pointing device, a keyboard, and a microphone* (see at least page 24, line 26 through page 25, line 9).

Conclusion

10. The following prior art made of record and not relied upon is considered pertinent to applicant's disclosure:

- Goldenberg et al (PCT/IL02/00741) discloses a system and methods for capturing, storing and retrieving customer face-to-face frontal interactions for the purpose of quality management.
- Beck et al (U.S. 6,138,139) discloses diverse interaction code modules, system, and methods for associating parties to transactions with agents and projects.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to THOMAS MANSFIELD whose telephone number is (571)270-1904. The examiner can normally be reached on Monday-Thursday 8:30 am-6 pm, alt. Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Beth Van Doren can be reached on 571-272-6737. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/T. M./
Examiner, Art Unit 3623

18 June 2008
Thomas Mansfield

/Beth Van Doren/
Supervisory Patent Examiner, Art Unit 3623